

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION- MILIMANI

CRIMINAL REVISION NO. 35 OF 2020

FELIX GITONGA.....APPLICANT

VERSES

REPUBLIC.....RESPONDENT

RULING

1. **FELIX GITONGA**, the Applicant, approached this court seeking review of the sentence meted out following the offence he committed. In the affidavit in support of the application he deponed that he was tried and convicted for the offence of theft of a motor vehicle whereby he was sentenced to serve three (3) years imprisonment. He expressed remorse and called upon this court to grant him a non-custodial sentence. He mitigated that he is a first offender, and the sole bread winner of his young family

2. The Respondent did not file a response to the Application.

3. The Application was canvassed through oral submissions. The applicant sought review of sentence. Ms. Ndombi, learned State Counsel pointed out that a similar application had been determined by Nzioka J. where the question of sentence was addressed, a fact admitted by the Applicant.

4. The application for review of sentence having been considered by Nzioka J. who presided over a court of concurrent jurisdiction with this court, her order finally determined the matter, therefore, this court is functus officio.

5. The Supreme Court expounding on the doctrine of functus officio in Election *Petitions Nos. 3, 4 & 5 Raila Odinga & Others vs. IEBC & Others [2013] eKLR* citing with approval an excerpt from an article by Daniel Malan Pretorius, in “The Origins of the functus officio Doctrine, with Specific Reference to its Application in Administrative Law,” (2005) 122 SALJ 832 stated thus: -

“The functus officio doctrine is one of the mechanisms by means of which the law gives expression to the principle of finality. According to this doctrine, a person who is vested with adjudicative or decision-making powers may, as a general rule, exercise those powers only once in relation to the same matter.... The [principle] is that once such a decision has been given, it is (subject to any right of appeal to a superior body or functionary) final and conclusive. Such a decision cannot be revoked or varied by the decision-maker.”

6. The upshot of the above is that this court being functus officio is not seized of jurisdiction to determine the matter. In the result, the application fails and is dismissed.

7. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY, THIS 16TH DAY OF JUNE, 2021.

L. N. MUTENDE

JUDGE